



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

The author is an advocate at The Hague and he would institute a great international court of appeal which should sit permanently in his own city, whose judges should there reside. He would vest this court with not merely judicial powers but with a controlling supervision over diplomatic negotiations and military operations, over treaties and over wars. He would invest the heads of this tribunal with permanent rank and station and reward them with great salaries. He would require certain linguistic accomplishments of them and he lets us know that he himself possesses these linguistic accomplishments. One can not object to the humanity of his appeal, or the desirability of his objects. His indictment of the state of armed peace where the burdens of war are made permanent instead of temporary, a state toward which this nation, in the opinion of some, is now progressing, is perhaps, the most convincing and vigorous part of his argument. The practicability of his scheme of almost universal dominion at The Hague seems by no means apparent and it is not probable that the nations of the earth will so far surrender autonomy as he suggests.

It ought to be added that the jury *du concours Narcisse-Thibault* organized by the International Bureau of Peace at Berne, has awarded to this memoir an honorable mention and a medal.

Many voices, many pens, many minds laboring for international justice and international peace aid in achieving those great consummations. Those who labor deserve our gratitude even when we can not wholly accede to their suggestions.

CHARLES NOBLE GREGORY.

La frode alla legge e la questione dei divorzi fra Italiani naturalizzati all'estero. G. Ottolenghi. Turin: Unione Tipografico-Editrice Torinese, 1909. L. 5.

We have in this study of Mr. Ottolenghi on "Fraud against the law and the question of divorces between Italians naturalized in a foreign country," an exceedingly favorable specimen of its class. It is, of course, quite possible to differ with the opinions expressed, and it is conceivable that the arguments adduced might be subjected to destructive criticism by the partisans of other theories, but we are left in no doubt as to what views the author maintains, the presentation is clear and logical, and the point at issue is never lost sight of. This is partly owing, no doubt, to the fact that the question raised is a concrete and practical one, demand-

ing a concrete and practical answer, but one may be permitted to think that there is also evidenced a certain admirable and welcome quality of mind.

The circumstances which give rise to this study are as follows: Divorce is forbidden under the laws of Italy. Expatriation and naturalization are freely permitted. It has become more or less common for husband and wife desiring to obtain a divorce, to seek naturalization in a foreign country where divorce is allowed, carry through the necessary proceedings there, and then resume the original domicile, and perhaps the original citizenship in Italy. As the object of such a proceeding is ordinarily to make possible a new marriage, serious questions affecting both status and property are likely to present themselves.

There has been a strong inclination to regard these divorces as fraudulent and to refuse them recognition in Italy. It is to be observed, however, that as the question is put, there is no suggestion of fraud as against either of the parties, or even against the courts which grant the divorce; the so-called fraud is purely and simply against the law of Italy; permitted and legal means are used to attain an end which could not be directly reached in a legal manner.

The general conception of fraud against the law is, therefore, first subjected to analysis. It would seem that there is an element of metaphor or personification in the use of the term at all. However, the author concludes that there is in fact no radical distinction between acts in fraud of the law and acts against the law. We can not by any safe or permissible system of construction look beyond the terms of the law itself to discover the evils at which it is aimed or the acts which it forbids. To seek to extend the scope of a legal prohibition beyond what can be drawn from its terms by a rational interpretation, is to trespass on the field of ethics or of legislation, and leads the way to all confusion.

Fraud on the law is, therefore, simply the commission of an act prohibited by law, by methods which are in themselves legal or wear an appearance of legality. The question always is, is the end achieved itself prohibited, or is it merely the act when done in some particular way or by some particular method?

In cases arising under international law the method employed is, of course, the subjection of the illegal act to another system of law under which it becomes legal.

Cases where the means employed consist in a mere change of domicile have this special feature, that intention is always an essential element in

domicil; hence, if it appears that there never was a *bona fide* intention to maintain the domicil there is a fatal vice in the original acquisition, and the fraud perpetrated by this means becomes ineffective. The acquisition of a new nationality, however, stands upon a different basis; it involves an act of sovereignty on the part of the state which can not be arbitrarily treated as a nullity by the state of origin, even should it appear that there was an element of fraud in the conditions under which it was obtained, always excepting the case where the conditions prescribed by the state of origin for the forfeiture or renunciation of original allegiance have not been complied with.

Apart from the obligation to perform military service it does not appear that the law of Italy imposes any special conditions on the renunciation of allegiance, and the supposition is that the acquisition of the new nationality is regular and valid on its face. Can the fact that it was acquired for the purpose of escaping the effects of Italian law vitiate the transaction? Mr. Ottolenghi thinks not; nor does he favor the alternative theory whereby the naturalization is to be regarded as valid, but does not produce all its ordinary effects inasmuch as the intention of the parties was not to acquire a new nationality *simpliciter*, but merely for certain purposes. Intention has, in fact, no bearing on the results that flow from naturalization, nor would it be either logical or practicable to create an intermediate status in which different national laws would be applied to different acts of the same person.

An obvious difficulty in applying the idea of fraud to the proceeding in question is in the determination of the moment at which the fraud may be held to have been consummated, and on this we find a variety of opinions. If, as seems to be the case, it can not be definitely placed in the proceedings for naturalization, it is even less easy to find it in the action for divorce, or even in the application for confirmation or execution of the foreign judgment in Italy. Nor does the writer think that execution can properly be refused on the ground of "public policy;" every step in the transaction is in strict conformity with law, and the policy of the state can hardly in this instance be held to suffer from the relations of foreign citizens.

As a matter of fact, the fraud, if there is one, arises at no one instant of the proceeding, but exists essentially in the intention of the parties; and, as the author asks, "How shall we bring suit against an intention?" Perhaps the answer might be that it is perfectly admissible where the fraud has been committed against a law. And here we have really an

indication of the gist of the difficulty, in the personification that is at the bottom of the whole conception.

The Hague convention dealt with certain aspects of the matter, and among others, formulated the rule that a fact which occurred before the change of citizenship shall not be invoked as a cause of divorce in the courts of the new country. Mr. Ottolenghi concludes from an examination of the rules as formulated and of the discussions and proposals that preceded them, that setting aside any question as to the validity of the change of nationality, the claim that recognition of the foreign judgment could be refused on the ground of "public order" and by reason of the immoral intention of the parties, even if admissible before the convention, has ceased to be tenable.

The conclusion, then, is that a divorce procured abroad by former citizens of Italy who have changed their nationality temporarily and with a view to returning to Italy when their purpose is accomplished, is perfectly legal, and must be recognized in the Italian courts in all its effects and implications. There is, however, undoubtedly a grievance in this state of affairs. The established policy of the national law is set at naught while the parties continue to enjoy all the privileges of life in their native country. What is the remedy? Mr. Ottolenghi suggests that it is to be found in the undoubted right of the state to refuse naturalization, and even to use the power of expulsion as against foreign subjects residing in Italy. The contempt manifested for Italian law can in this manner be penalized, if its direct results can not be avoided.

JAMES BARCLAY.

The Promise of American Life. By Herbert Croly. New York: The Macmillan Company. 1909. pp. viii, 468.

Mr. Croly at the outset of his work announces that the loyal American must be prepared to sacrifice the traditional American ways of realizing the national vision; and that the promise of American life in its noblest form is to be fulfilled "not by sanguine anticipations, not by a conservative imitation of past achievements, but by laborious, single-minded, clear-sighted, and fearless work." With fairness of mind the writer examines conditions that in the past have encouraged generous and irresponsible optimism. He utters a timely warning against the consequences of the popular expectation that "familiar benefits will continue to accumulate automatically." He urges the necessity of wide-spread appreciation of obstacles to be overcome.